

94-CV-2145-ILG-jg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT ED. N.Y.

★ JAN 08 1999 ★

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THOMAS MCDERMOTT, et al.,

P.M. _____
TIME A.M. _____

Plaintiffs,

JUDGMENT
94-CV-2145 (ILG)

-against-

CITY OF NEW YORK, et al.,

Defendants.
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A memorandum and order of the Honorable I. Leo Glasser, United States District Judge, having been filed on November 6, 1998, having received no objections, adopting the October 16, 1998 report and recommendation of Magistrate Judge Steven Gold recommending that defendants' Richard Muccio and Anthony Muccio counterclaims be dismissed without prejudice for failure to prosecute, See Link v. Wabash Railroad Co., 370 U.S. 626 (1962) (federal district court has power to dismiss action for failure to prosecute); dismissing without prejudice the remaining state law claims as there is no basis for the exercise of federal jurisdiction to the parties' rights to pursue them in an appropriate forum; See 28 U.S.C. § 1367(c)(3)(A) (A district court may decline to exercise supplemental jurisdiction over a claim if it has dismissed all claims over which it has original jurisdiction). See generally Castellano v. Board of Trustees of Police Officers' Variable Supplements Fund, 937 F.2d 752 (2d Cir. 1991); Turkish v. Kasenetz, 832 F. Supp. 565 (E.D.N.Y. 1993); and, closing the case; it is

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ORDERED and ADJUDGED that the plaintiffs take nothing of the defendants; that the October 16, 1998 report and recommendation of Magistrate Judge Steven Gold is adopted; that the counterclaims of Richard Muccio and Anthony Muccio are dismissed without prejudice for failure to prosecute; that the remaining claims brought pursuant to state law are dismissed without prejudice to the parties' rights to pursue them in an appropriate forum; and, that the case is closed.

Dated: Brooklyn, New York
January 8, 1999



ROBERT C. HEINEMANN
Clerk of Court